

FILED

JUL 26 2019

**IN THE UNITED STATES DISTRICT OF TEXAS
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY

GLORIA ROSALES,
Plaintiff

VS.

UNITED STATES OF AMERICA,
Defendant

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**CIVIL ACTION NO.
JURY TRIAL REQUESTED**

SA19CA0899FB

PLAINTIFFS' ORIGINAL COMPLAINT – FEDERAL TORT CLAIMS ACT

GLORIA ROSALES, Plaintiff, by and through her attorneys, The Law Offices of Thomas J. Henry, now come before this Court and complains of the United States of America, as follows:

I. PARTIES

1. GLORIA ROSALES, Plaintiff, is an individual residing in Guadalupe County, Texas, and thus is a resident of the Western District of Texas.
2. The Defendant is the United States of America. The Defendant may be served with summons upon, Stephanie Rico, agent for service of process for the United States Attorney for the Western District of Texas, 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216.

II. JURISDICTION AND VENUE

3. The claims herein are brought against The United States of America pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.* and 28 U.S.C. §1346(b) for money damages as compensation for loss of property and personal injuries that were caused by the negligent and wrongful acts and omissions of employees of the United States of

America while acting within the course and scope of their offices and employment, under circumstances where the United States, if a private person, would be liable to the Plaintiff in accordance with the laws of the State of Texas.

4. Venue is proper under 28 U.S.C. §1391(b)(2) in that all, or a substantial part, of the acts and omissions forming the basis of this suit occurred in Guadalupe County, Texas, which is within the Western District of Texas – San Antonio Division.
5. Plaintiff requests a trial by jury.

III. CONDITIONS PRECEDENT

6. Plaintiff has fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act.
7. This suit has been timely filed, in that Plaintiff timely served notice of her claims on the appropriate Federal Agency.
8. The appropriate Federal Agency failed to make a final disposition of Plaintiff's claims within six months after Plaintiff's claims were filed, and such failure is deemed by Plaintiff to be a final denial pursuant to 28 U.S.C. §2675.

IV. SUMMARY

9. On August 24, 2017, Plaintiff had arrived in the parking lot of Church's Chicken located at 824 W San Antonio St, New Braunfels, TX 78130. After Plaintiff entered this parking lot, Plaintiff was suddenly and violently hit on the right side of her vehicle by a U-HAUL type of truck being driven by Carlos Martinez, an employee of the United States Postal Service, to deliver mail. After the impact, the Defendant's employee-driver, Carlos Martinez, pulled forward, got of his vehicle and said "I'm sorry...I didn't see you... this is my second accident." Plaintiff and the Defendant's employee-driver, Carlos Martinez

exchanged driver's license information. Then, Defendant's employee-driver, Carlos Martinez, said he needed to call his supervisor. Thereafter, a female driver arrived from the United States Postal Service to drive away the U-HAUL type of truck. Plaintiff tried to exchange insurance information, but the new female driver would not provide any insurance information at the scene.

V. COUNT I – NEGLIGENCE

10. Plaintiffs incorporate by reference herein all allegations set forth above.
11. On August 24, 2017, Plaintiff had arrived in the parking lot of Church's Chicken located at 824 W San Antonio St, New Braunfels, TX 78130.
12. Plaintiff was suddenly and violently hit on the right side of her vehicle by a U-HAUL type of truck being driven by Carlos Martinez, an employee of the United States Postal Service.
13. At all times relevant hereto, Carlos Martinez was acting within the course and scope of his office and employment with Defendant the United States of America, specifically as a member of the United States Postal Service.
14. Carlos Martinez operated the vehicle in a negligent manner and violated the duty which he owed the Plaintiff to exercise ordinary care in the operation of the motor vehicle in one or more of the following respects:
 - a. in failing to keep a proper lookout or such lookout, which a person of ordinary prudence would have maintained under same or similar circumstances;
 - b. in failing to timely apply the brakes of the vehicle in order to avoid the collision in question;
 - c. in failing to turn the vehicle in an effort to avoid the collision in question;

- d. in failing to sound horn to warn of imminent danger; and
 - e. in failing to pay proper attention while driving; and
15. Each of these acts and/or omissions of Carlos Martinez , whether taken singularly or in any combination constitute negligence, which proximately caused the collision and injuries and other losses as specifically set forth herein, all of which Plaintiff suffered and which Plaintiff will continue to suffer in the future, if not for the remainder of their natural lives.

VII. DAMAGES

16. As a direct and proximate result of the collision and the negligent conduct of the Defendant's driver, Carlos Martinez, Plaintiff suffered severe bodily injury to her neck, upper back, lower back, right wrist, and other parts of her body generally. The injuries are permanent in nature and have had a serious effect on Plaintiff's health and well-being. These specific injuries and their ill effects have, in turn, caused the Plaintiff's physical and mental conditions to deteriorate generally, and the specific injuries and ill effects alleged have caused and will, in all reasonable probability, cause the Plaintiff to suffer consequences and ill effects of this deterioration throughout her body for a long time in the future, if not for the balance of her natural life. As a further result of the nature and consequences of their injuries, the Plaintiff suffered great physical and mental pain, suffering and anguish and in all reasonable probability, will continue to suffer in this manner for a long time into the future, if not for the balance of her natural life.
17. As a further result of the injuries sustained by Plaintiff, there is a reasonable probability that she will require further medical care and attention and will incur future reasonable and necessary expenses for her medical care and attention.

18. As a consequence of the injuries sustained by Plaintiff, she has sustained physical impairment and/or disfigurement. In all reasonable probability, this disability will cause Plaintiff to suffer long into the future, if not for the balance of her natural life.
19. Specifically, as a direct and proximate result of the negligent acts of Defendant's driver, Carlos Martinez, Plaintiff has endured significant pain and suffering, mental anguish, and physical impairment as a result of the collision in question. Plaintiff continues to seek treatment for her injuries sustained in the collision in question.

VIII. PRAYER FOR RELIEF

20. WHEREFORE, Plaintiff is entitled to damages from the United States of America, and they do hereby pray that judgment be entered in their favor and against the United States of America as follows:

1. Pain and suffering in the past;
2. Pain and suffering in the future;
3. Mental anguish in the past;
4. Mental anguish in the future;
5. Past medical expenses;
6. Future medical expenses;
7. Physical impairment in the past;
8. Physical impairment in the future;
9. Physical disfigurement in the future;
10. Loss of future wages;
11. Loss of wage-earning capacity;
12. Property damage; and
13. Loss of use.

Plaintiff further seeks any further and additional relief at law or in equity that this Court may deem appropriate, just, or proper.

Date: July 26, 2019

Respectfully submitted,
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